

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

FILED BY SP D.C.

05 APR 19 PM 1:57

ROBERT R. DI TROLIO
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W.D. OF TN-JACKSON

CATHY TURNBOW,
Plaintiff

vs.

JO ANNE B. BARNHART,
COMMISSIONER OF
SOCIAL SECURITY,

Defendant

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)
) Civil Action No. 04-1239-T
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FINAL JUDGMENT REVERSING COMMISSIONER AND
ORDERING REMAND UNDER SENTENCE FOUR OF 42 U.S.C. § 405 (g)

After reviewing the above-captioned case, agency counsel requested that the Appeals Council undertake further review of this case, which it agreed to do. Accordingly, the parties jointly propose that this case be reversed and remanded pursuant to sentence four of 42 U.S.C. § 405(g) for further consideration and a new hearing.

IT IS THEREFORE ORDERED that the Commissioner's decision is reversed and the matter remanded under sentence four of 42 U.S.C. § 405(g) for further development. Upon remand, the Appeals Council will instruct the administrative law judge ("ALJ") to conduct a new hearing and issue a new decision, wherein he will properly evaluate the opinion of Plaintiff's treating physician, Stanley B. Kaplan, M.D., and specifically articulate the reasons for the weight given to such opinion. The ALJ did not mention Dr. Kaplan or indicate what weight, if any, was given to his opinion, nor did he include Dr. Kaplan's limitations within his residual functional capacity finding ("RFC"). Upon remand, the ALJ will also be instructed to re-contact Dr. Kaplan for clarification of his responses to a Physical Residual Functional Capacity Questionnaire dated November 11, 2003. Additionally, the Appeals Council will direct the ALJ to re-evaluate Plaintiff's ability to perform her past relevant work. The ALJ found that Plaintiff could perform her past work as a hand packager,

but according to the regulations, her earnings record shows that she did not perform that job at the level of substantial gainful activity.

Upon remand, the Commissioner shall take action consistent with the foregoing.

SO ORDERED.

19 April 2005

Date

James D. Todd

James D. Todd

United States District Court Judge

APPROVED BY:

Roger Stanfield

Roger Stanfield

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By JAD
By Consent

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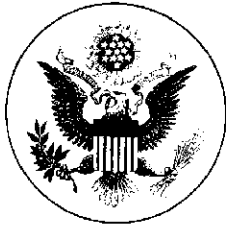
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Honorable James Todd
US DISTRICT COURT